



Civil Resolution Tribunal

Date Issued: April 18, 2024

Files: SC-2023-000903 and
SC-CC-2023-012000

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Martens v. Robichaud*, 2024 BCCRT 372

B E T W E E N :

FAUVE RENEE MARTENS

APPLICANT

A N D :

TRISHA ROBICHAUD

RESPONDENT

A N D :

FAUVE RENEE MARTENS

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This is a dispute between former roommates. This decision involves two linked disputes which are a claim and counterclaim between the same parties, so I have issued one decision for both disputes.
2. The applicant and respondent by counterclaim, Fauve Renee Martens, rented a room from the respondent and applicant by counterclaim, Trisha Robichaud.¹
3. In SC-2023-000903, Ms. Martens says Trisha Robichaud evicted her and would not allow her cat to reside in the home, contrary to the parties' agreement. She claims \$585 for her damage deposit, \$875 for her pet deposit, and \$450 for reimbursement of rent. Ms. Martens is represented by a family member.
4. Trisha Robichaud says they gave Ms. Martens adequate notice, and they were entitled to keep Ms. Martens' deposits to cover financial losses. In SC-CC-2023-012000, Trisha Robichaud counterclaims for \$1,170 in rent. Trisha Robichaud is self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that

¹ The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout the process, including in published decisions. Trisha Robichaud did not provide their title or pronouns, so I will refer to them by their full name and with gender neutral pronouns throughout this decision, intending no disrespect.

includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
8. Where permitted by CRTA section 118, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
9. Residential tenancy disputes are generally within the exclusive jurisdiction of the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). However, the RTB declines jurisdiction over roommate disputes like this one. So, I find the RTA does not apply and this is a contractual roommate dispute within the CRT's small claims jurisdiction over debt and damages.

ISSUES

10. The issues in SC-2023-000903 are:
 - a. Must Trisha Robichaud pay Ms. Martens \$585 for her damage deposit?
 - b. Must Trisha Robichaud pay Ms. Martens \$875 for her pet deposit?
 - c. Must Trisha Robichaud pay Ms. Martens \$450 for unused rent?
11. The issue in SC-CC-2023-012000 is whether Ms. Martens must pay Trisha Robichaud \$1,170 for one month's rent.

BACKGROUND AND EVIDENCE

12. In this civil proceeding, each party must prove their respective claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

As the evidence and issues overlap between the two disputes, I have considered the parties' evidence and submissions from both disputes in this decision.

13. On January 1, 2023, the parties moved into a shared house. Trisha Robichaud entered into a lease agreement with the house's owner. Ms. Martens and a third roommate, DA, entered into a sublease agreement with Trisha Robichaud.
14. In evidence, Trisha Robichaud provided an unsigned copy of the sublease agreement. Ms. Martens provided a two-page excerpt of what appears to be the same agreement, showing both parties' signatures. Both parties rely on portions of the agreement, so I find that they mutually agreed to its terms.
15. I have summarized the agreement's relevant terms below:
 - a. The agreement would begin on January 1, 2023 and continue on a month-to-month basis until terminated by either party.
 - b. Either party could terminate the agreement at any time "for justified reasons" by providing 30 days' notice to the other party.
 - c. Ms. Martens would pay Trisha Robichaud \$585 for a damage deposit. Trisha Robichaud would refund the deposit to Ms. Martens within 30 days of the end of the tenancy, provided the premises were in the same condition as when Ms. Martens moved in, other than reasonable wear and tear. Trisha Robichaud would explain their reason for retaining any portion of the deposit to Ms. Martens in writing within 30 days.
 - d. Ms. Martens would pay Trisha Robichaud \$1,170 for rent on the first of each month.
 - e. Ms. Martens would not keep pets or animals on the premises without Trisha Robichaud's prior written permission. Trisha Robichaud could revoke previous consent by giving 30 days' notice. One cat would be allowed, subject to "harmonious living" with Trisha Robichaud's cat.

16. While not included in the agreement, text messages in evidence show that the parties separately agreed that Ms. Martens would pay Trisha Robichaud a pet deposit of \$875.
17. Ms. Martens paid Trisha Robichaud \$1,460 for the damage and pet deposits on December 25, 2022, and \$1,170 for January's rent on December 29, 2022.
18. On January 19, 2023, Ms. Martens sent Trisha Robichaud a text message saying that she would be arriving home with her cat, Twiglet, in a few days. Ms. Martens asked if Trisha Robichaud could keep their cat, Mewzah, in their room for the night when Twiglet arrived.
19. Trisha Robichaud responded saying that they did not think that it would work long-term for the parties to live together. They said that they did not want Ms. Martens to bring Twiglet to the home because it would be "a big move to do considering this isn't the right fit."
20. Trisha Robichaud suggested March 1 as a date for Ms. Martens to move out, but said they would be open to April 1 or May 1 if Ms. Martens needed more time. They confirmed that they would return Ms. Martens' pet deposit and damage deposit when she departed.
21. The parties exchanged further messages over the following days. On January 20, Trisha Robichaud said that they were apprehensive to introduce Twiglet to the home because they could foresee it being a burden, and it would not be worth it if the parties would not be living together long-term. Later the same day, Trisha Robichaud said that Ms. Martens could still bring Twiglet if she wanted to, but that it would be best to keep her completely separated from Mewzah.
22. On January 24, Ms. Martens said that she would move out by February 1. She asked Trisha Robichaud to return her damage and pet deposits by that date.

23. Ms. Martens removed her belongings from the home and returned her keys on or before February 1. Trisha Robichaud undisputedly did not return Ms. Martens' damage or pet deposits.

ANALYSIS

Damage and pet deposits

24. As noted above, the parties' agreement required Trisha Robichaud to return Ms. Martens' damage deposit within 30 days of the end of the tenancy as long as the premises were in the same condition.
25. The parties' written agreement does not specifically address the pet deposit. However, based on the parties' text messages agreeing that Trisha Robichaud and Ms. Martens would each pay for half of the pet deposit because they were the roommates with pets, I find the pet deposit's purpose was to pay for any damage caused by Ms. Martens' cat during the tenancy.
26. Trisha Robichaud does not argue that Ms. Martens damaged the property, and it is undisputed that Twiglet caused no damage as she ultimately did not live in the house at all. Trisha Robichaud essentially argues that they are entitled to keep the deposits as compensation for their financial losses from Ms. Martens moving out early. However, I find the parties' agreement does not contemplate either deposit being used for this purpose. So, I find Trisha Robichaud must return the two deposits to Ms. Martens. This totals \$1,460.

Unused rent

27. Ms. Martens argues that Trisha Robichaud terminated the parties' agreement on January 19, by saying that Ms. Martens should not bring Twiglet to the home. Because Ms. Martens had already paid January rent, she claims a refund of \$450 for 12 days of rent, from January 19 to January 31.

28. Trisha Robichaud's position about Twiglet is inconsistent. They argue that the parties agreed to a 3-month trial period to assess if their cats would cohabitate well, but elsewhere they refer to this as a 1-month trial period. In any event, they say that the parties agreed that Twiglet would be welcomed "more than a few months" after Ms. Martens moved in, with adequate notice. They say that the parties had agreed to complete certain repairs to the house before Twiglet could move in, because some of the doors did not properly latch. Lastly, they say that the parties agreed that they would use a specific training process to introduce the two cats.
29. As discussed above, the parties' agreement says that one cat would be permitted "upon harmonious living" with Trisha Robichaud's cat, but that Trisha Robichaud could revoke this permission with 30 days' notice. Notably, the agreement does not include any mention of a trial or notice period, or any required training or modifications to the home before Twiglet could move in. It also does not require that the cats be kept separate from each other.
30. Ms. Martens disputes that the parties had any specific agreement about the introduction process or the home's suitability for two cats. She relies on Clause 32 of the sublease agreement, which says that the sublease agreement constitutes the sole agreement between the parties and cannot be modified without the written consent of both parties. It also says that any oral representations made at the time of executing the agreement are not binding upon either party.
31. Ms. Martens says that the agreement does not require her to provide prior notice or do anything to prepare the house for the cat. I agree. I find the parties' agreement permitted Ms. Martens to bring Twiglet into the home as of January 1, 2023, without further notice to or permission from Trisha Robichaud.
32. While the parties provided submissions about whether Twiglet is Ms. Martens' emotional support animal, I find nothing turns on this, because the parties' agreement does not specify that only emotional support animals would be permitted.

33. While she does not use this term, I find Ms. Martens argues that Trisha Robichaud repudiated the agreement. Repudiation occurs where a party indicates that they no longer intend to be bound by a contract's terms. If the other party accepts the repudiation, the contract is terminated.²
34. Here, I find it was a fundamental term of the parties' agreement that Ms. Martens could bring Twiglet into the house. I find that Trisha Robichaud indicated that they were repudiating the agreement by first saying that Ms. Martins should not bring Twiglet to the home, and later by attempting to impose a new condition that the cats be kept entirely separate from each other, as this was not part of the parties' initial agreement. I find Ms. Martens then accepted Trisha Robichaud's repudiation of the agreement, by responding that she would move out by February 1. This means that both parties were released from their obligations under the agreement.
35. The parties also made submissions about their general incompatibility as roommates, and whether Trisha Robichaud was justified in asking Ms. Martens to move out. However, Trisha Robichaud acknowledges that their reasons for not wanting to continue living with Ms. Martens, such as communication and cleanliness concerns, did not require Ms. Martens to move out right away. I find Trisha Robichaud's complaints unproven, and in any event, they do not amount to breaches of the parties' agreement.
36. In the case of a repudiatory breach, the innocent party may claim damages based on their out-of-pocket losses which would put them in the position they would be in if the contract had never been made.³
37. Here, Ms. Martens says that she did not return to live in the home after Trisha Robichaud's January 19 message, but says that she removed her belongings and returned her keys on January 27. In contrast, Trisha Robichaud says that Ms. Martens

² *Guarantee Co. of North America v. Gordon Capital Corp.*, 1999 CanLII 664 (SCC).

³ See *Bhullar v. Dhanani*, 2008 BCSC 1202 at paragraphs 42 to 45 and *Karimi v. Gu*, 2016 BCSC 1060 at paragraphs 206 to 211.

did not move out until February 1. Neither party provided supporting evidence of the date Ms. Martens moved out.

38. While Ms. Martens says that she had to make alternative living arrangements for January 19 to 31, she did not provide any evidence of the cost of the alternative arrangements. In the absence of any evidence of Ms. Martens' out-of-pocket losses or the date that she vacated the property, I dismiss Ms. Marten's claim for a refund of unused rent.

Counterclaim

39. Trisha Robichaud counterclaims for \$1,170 for Ms. Martens' February rent, because they say Ms. Martens did not give 30 days' notice before moving out as required by the parties' agreement. As discussed above, I find Trisha Robichaud repudiated the contract. This means that Ms. Martens was released from her obligations under the contract, including the requirement to give 30 days' notice before moving out. So, I dismiss Trisha Robichaud's claim for February rent.
40. Trisha Robichaud also claims payment for utilities they say Ms. Martens did not pay for. However, they did not provide further details or any evidence about the alleged unpaid utilities. So, I dismiss this claim as unproven.

CRT FEES, EXPENSES, AND INTEREST

41. The *Court Order Interest Act* applies to the CRT. Ms. Martens is entitled to interest on her deposit refunds from February 20, 2023, 30 days after the agreement's termination, to the date of this decision. This equals \$82.42.
42. Under CRTA section 49 and the CRT Rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As Ms. Martens was substantially successful in SC-2023-000903, I find she is entitled to \$125 in paid CRT fees. I dismiss Trisha Robichaud's claim for CRT fees in SC-CC-2023-012000. Neither party claimed dispute-related expenses.

ORDERS

43. Within 21 days of this decision, I order Trisha Robichaud to pay Ms. Martens a total of \$1,667.42, broken down as follows:
- a. \$1,460 as reimbursement for her pet and damage deposits,
 - b. \$82.42 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
44. Ms. Martens is entitled to post-judgment interest, as applicable.
45. I dismiss Ms. Martens' remaining claims and Trisha Robichaud's counterclaims.
46. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Alison Wake, Tribunal Member